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July 13, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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BONNIE J. K. RICHARDSON
VICE PRESIDENT
TRADE AND FEDERAL AFFAIRS

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW, Room TW-A325
Washington, DC 20554

**RE: *Ex Parte* Presentation: In the Matter of Video Description of
Video Programming, MM Docket NO. 99-339 ✓**

Dear Ms. Salas:

This is to notify the Office of the Secretary that on July 12, the undersigned, Mr. Harold Snider, Assistant to the President, National Federation of the Blind, and Ms. Alicia Smith, Senior Vice President, the Smith Free Group, representing Sony Pictures Entertainment Inc., made a joint oral *ex parte* presentation to Commissioner Michael Powell. Paul A. Jackson and McLain Sieverding also participated in the meeting. The purpose of the presentation was to review and explain the points made in February 23 Comments filed by MPAA and NFB, respectively.

Mr. Snider highlighted the deep divisions within the visually impaired community with regard to video description. He informed the Commissioner that the overwhelming majority of the 3500 delegates to the NFB's annual meeting in Atlanta, July 2-8, 2000, voted to oppose mandatory regulations on video description of entertainment programming reconfirming a position first adopted by the NFB's membership in 1996. (Copy attached.) Mr. Snider also discussed problems with equipment accessibility, namely that many new SAP-equipped televisions require navigating menus to access the SAP channel, but viewing menus is difficult or impossible for those with visual impairments.

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Subsequent to the meeting and in response to a request from Commissioner Powell, documents relating to the legislative history of Section 713 were hand-delivered to Mr. Jackson. (Copies attached.)

In accordance with Section 1.1206 of the Federal Communications Commission rules, this original and one copy are provided to your office. A copy of this notice has been hand-delivered to the parties listed above.

Sincerely yours,

A handwritten signature in cursive script, reading "Bonnie J. Richardson". The signature is written in black ink and is positioned below the "Sincerely yours," text.

National Federation of the Blind
Resolution 2000-05

WHEREAS, the Federal Communications Commission (FCC) has proposed a rule requiring the four networks to offer descriptions of a minimum amount of entertainment programming per quarter, averaging approximately four hours of prime-time entertainment programming per week, provided through the Separate Audio Programming (SAP) audio channel; and

WHEREAS, the blind are routinely denied access to textual information flashed on the screen such as emergency weather updates, news bulletins scrolled along the bottom of the screen, sports scores, program guides, phone numbers in advertisements, the identities of speakers during news programs, and other data not otherwise read aloud; and

WHEREAS, making such textual information accessible to the blind in a standardized form through the secondary audio channel would be a relatively easy and inexpensive process to develop and automate if that specific outcome was firmly and universally required by the FCC; and

WHEREAS, it is doubtful that most networks will address the issue of access to on-screen textual information under the FCC's proposed mandate, which requires only that description be provided for entertainment programs; and

WHEREAS, the vast array of broadcast information currently printed and not voiced is information far more vital and valuable for America's television viewers than is the entertainment programming targeted by the FCC proposal; and

WHEREAS, the FCC should handle first things first and move to entertainment programming only after civic, safety, and health-related information including advertising is routinely provided to viewers without sight: Now, therefore,

BE IT RESOLVED by the National Federation of the Blind in convention assembled this eighth day of July, 2000, in the City of Atlanta, Georgia, that this organization call upon the Federal Communications Commission to modify its currently proposed and narrowly focused mandate for descriptive video in favor of one that would prioritize making important on-screen textual information universally available to America's blind television viewers through a standardized audio format.

channel video programming and other services offered over multichannel video programming systems from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor. Such regulations shall not prohibit any multichannel video programming distributor from also offering converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, to consumers, if the system operator's charges to consumers for such devices and equipment are separately stated and not subsidized by charges for any such service.

"(b) **PROTECTION OF SYSTEM SECURITY.**—The Commission shall not prescribe regulations under subsection (a) which would jeopardize security of multichannel video programming and other services offered over multichannel video programming systems, or impede the legal rights of a provider of such services to prevent theft of service.

"(c) **WAIVER.**—The Commission shall waive a regulation adopted under subsection (a) for a limited time upon an appropriate showing by a provider of multichannel video programming and other services offered over multichannel video programming systems, or an equipment provider, that such waiver is necessary to assist the development or introduction of a new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or products. Upon an appropriate showing, the Commission shall grant any such waiver request within 90 days of any application filed under this subsection, and such waiver shall be effective for all service providers and products in that category and for all providers of services and products.

"(d) **AVOIDANCE OF REDUNDANT REGULATIONS.**—

"(1) **COMMERCIAL AVAILABILITY DETERMINATIONS.**—Determinations made or regulations prescribed by the Commission with respect to commercial availability to consumers of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, before the date of enactment of the Telecommunications Act of 1996 shall fulfill the requirements of this section.

"(2) **REGULATIONS.**—Nothing in this section affects section 64.702(e) of the Commission's regulations (47 C.F.R. 64.702(e)) or other Commission regulations governing interconnection and competitive provision of customer premises equipment used in connection with basic common carrier communications services.

"(e) **SUNSET.**—The regulations adopted under this section shall cease to apply when the Commission determines that—

"(1) the market for the multichannel video programming distributors is fully competitive;

"(2) the market for converter boxes, and interactive communications equipment, used in conjunction with that service is fully competitive; and

"(3) elimination of the regulations would promote competition and the public interest.

"(f) **COMMISSION'S AUTHORITY.**—Nothing in this section shall be construed as expanding or limiting any authority that the Commission may have under law in effect before the date of enactment of the Telecommunications Act of 1996."

SEC. 505. VIDEO PROGRAMMING ACCESSIBILITY.

Title VII is amended by inserting after section 712 (47 U.S.C. 612) the following new section:

"SEC. 713. VIDEO PROGRAMMING ACCESSIBILITY.

"(a) **COMMISSION INQUIRY.**—Within 180 days after the date of enactment of the Telecommunications Act of 1996, the Federal Communications Commission shall complete an inquiry to ascer-

tain the level at which video programming is closed captioned. Such inquiry shall examine the extent to which existing or previously published programming is closed captioned, the size of the video programming provider or programming owner providing closed captioning, the size of the market served, the relative audience shares achieved, or any other related factors. The Commission shall submit to the Congress a report on the results of such inquiry.

"(b) **ACCOUNTABILITY CRITERIA.**—Within 18 months after such date of enactment, the Commission shall prescribe such regulations as are necessary to implement this section. Such regulations shall ensure that—

"(1) video programming first published or exhibited after the effective date of such regulations is fully accessible through the provision of closed captions, except as provided in subsection (d); and

"(2) video programming providers or owners maximize the accessibility of video programming first published or exhibited prior to the effective date of such regulations through the provision of closed captions, except as provided in subsection (d).

"(c) **DEADLINES FOR CAPTIONING.**—Such regulations shall include an appropriate schedule of deadlines for the provision of closed captioning of video programming.

"(d) **EXEMPTIONS.**—Notwithstanding subsection (b)—

"(1) the Commission may exempt by regulation programs, classes of programs, or services for which the Commission has determined that the provision of closed captioning would be economically burdensome to the provider or owner of such programming;

"(2) a provider of video programming or the owner of any program carried by the provider shall not be obligated to supply closed captions if such action would be inconsistent with contracts in effect on the date of enactment of the Telecommunications Act of 1996, except that nothing in this section shall be construed to relieve a video programming provider of its obligations to provide services required by Federal law; and

"(3) a provider of video programming or program owner may petition the Commission for an exemption from the requirements of this section, and the Commission may grant such petition upon a showing that the requirements contained in this section would result in an undue burden.

"(e) **UNDUE BURDEN.**—The term 'undue burden' means significant difficulty or expense. In determining whether the closed captions necessary to comply with the requirements of this paragraph would result in an undue economic burden, the factors to be considered include—

"(1) the nature and cost of the closed captions for the programming;

"(2) the impact on the operation of the provider or program owner;

"(3) the financial resources of the provider or program owner; and

"(4) the type of operations of the provider or program owner.

"(f) **VIDEO DESCRIPTIONS INQUIRY.**—Within 6 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall commence an inquiry to examine the use of video descriptions on video programming in order to ensure the accessibility of video programming to persons with visual impairments, and report to Congress on its findings. The Commission's report shall assess appropriate methods and schedules for phasing video descriptions into the marketplace, technical and quality standards for video descriptions, a definition of programming for which video descriptions would apply, and other technical and legal issues that the Commission deems appropriate.

"(g) **VIDEO DESCRIPTION.**—For purposes of this section, 'video description' means the insertion of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue.

"(h) **PRIVATE RIGHTS OF ACTIONS PROHIBITED.**—Nothing in this section shall be construed to authorize any private right of action to enforce any requirement of this section or any regulation thereunder. The Commission shall have exclusive jurisdiction with respect to any complaint under this section."

TITLE IV—REGULATORY REFORM

SEC. 401. REGULATORY FORBEARANCE.

Title I is amended by inserting after section 9 (47 U.S.C. 159) the following new section:

"SEC. 10. COMPETITION IN PROVISION OF TELECOMMUNICATIONS SERVICE.

"(a) **REGULATORY FLEXIBILITY.** Notwithstanding section 332(c)(1)(A) of this Act, the Commission shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that—

"(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

"(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

"(3) forbearance from applying such provision or regulation is consistent with the public interest.

"(b) **COMPETITIVE EFFECT TO BE WEIGHED.**—In making the determination under subsection (a)(3), the Commission shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.

"(c) **PETITION FOR FORBEARANCE.**—Any telecommunications carrier, or class of telecommunications carriers, may submit a petition to the Commission requesting that the Commission exercise the authority granted under this section with respect to that carrier or those carriers, or any service offered by that carrier or carriers. Any such petition shall be deemed granted if the Commission does not deny the petition for failure to meet the requirements for forbearance under subsection (a) within one year after the Commission receives it, unless the one-year period is extended by the Commission. The Commission may extend the initial one-year period by an additional 90 days if the Commission finds that an extension is necessary to meet the requirements of subsection (a). The Commission may grant or deny a petition in whole or in part and shall explain its decision in writing.

"(d) **LIMITATION.**—Except as provided in section 251(f), the Commission may not forbear from applying the requirements of section 251(c) or 271 under subsection (a) of this section until it determines that those requirements have been fully implemented.

"(e) **STATE ENFORCEMENT AFTER COMMISSION FORBEARANCE.**—A State commission may not continue to apply or enforce any provision of this Act that the Commission has determined to forbear from applying under subsection (a)."

SEC. 402. BIENNIAL REVIEW OF REGULATIONS; REGULATORY RELIEF.

(a) **BIENNIAL REVIEW.**—Title I is amended by inserting after section 10 (as added by section 401) the following new section:

"SEC. 11. REGULATORY REFORM.

"(a) **BIENNIAL REVIEW OF REGULATIONS.**—In every even-numbered year (beginning with 1998), the Commission—